



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 18, 1998

Ms. Kristi A. Taylor
Neiman & Barnes, L.L.P.
386 W. Main
P.O. Box 777
Lewisville, Texas 75067

OR98-0473

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112836.

The City of Lewisville Police Department (the "department") received two requests from the same requestor for a total of six offense reports. We have combined your requests to this office into one ruling with the above-referenced identification number. You state the department has released the first page of the offense reports to the requestor, but assert that the remaining information requested is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and under a right of privacy. You also raise section 552.108 for a portion of the requested information. We have considered your arguments and have reviewed the information submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that under section 58.007(c) of the Family Code, some of the information is confidential because it involves juvenile suspects. Currently, section 58.007 of the Family Code provides that law enforcement records concerning a child must not be publicly disclosed. Tex. Fam. Code Ann. § 58.007(c). However, the amending bill provides that "[c]onduct that occurs before the effective date of this Act is covered by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose." *Id.* § 53(b), 1997 Tex. Sess. Laws at 4199. Several of the requested reports involve juvenile conduct that occurred before January 1, 1996. At the time the conduct occurred, the applicable law in effect was Family Code section 51.14 which provided, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. *See also* Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to “police blotter” and related information). You do not indicate that the offense reports at issue here relate to charges for which the city transferred the juvenile under section 54.02 of the Family Code¹ to a criminal court for prosecution, or that article 15.27 of the Code of Criminal Procedure² applies. Further, none of the exceptions to former section 51.14(d) appear to apply to the requestor. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Accordingly, we conclude that the department must withhold the juvenile records that we have marked under section 552.101 of the Government Code as information deemed confidential by law.

Section 552.108, the “law enforcement exception,” provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You inform this office that four of the requested offense reports relate to cases which concluded but did not result in conviction or deferred adjudication. On this basis, we conclude that the two offense reports which do not involve juvenile conduct, which we have marked, may be withheld from disclosure under section 552.108(a)(2).³

¹Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, *amended by* Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

²Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

³In this regard, we note that one of the offense reports, number 94-331, involves two suspects who are aged 17, and one whose age is not listed. A “child” for purposes of section 51.14(d) of the Family Code “means a person who is: (A) ten years of age or older and under 17 years of age; or (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.” Family Code § 51.02. As it appears this offense report

However, we note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). You indicate that the department has provided the requestor with front page offense report information. Section 552.108 provides that basic offense report information is not protected from disclosure. Basic information is the type of information that is generally included on the front page of an offense report. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [15th Dist.] 1975), *writ ref'd n.r.e. per curiam*, S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, its location is not determinative and it must be released regardless of where it is located. To determine what information must be released, the type of information must be examined rather than where it is located. See Open Records Decision No. 127 (1976) at 5. Thus, the city must provide the requestor with front page information from these two offense reports. The remainder of the information in the two offense reports which we have marked may be withheld from disclosure under section 552.108(a)(2).⁴

As we resolve your request under sections section 51.14(d) of the Family Code and under section 552.108(a)(2), we need not address your argument under 552.101 in conjunction with a right of privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 112836

Enclosures: Marked documents

involves suspects who were 17 at the time of the alleged crime, we conclude we must address this offense report under section 552.108, rather than under section 51.14(d) of the Family Code.

⁴We also note that the city has discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

cc: Ms. Leslie A. Williams
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(w/o enclosures)